

## R E M A R K S

- Claims 1 – 46 and 54 – 56 are pending in the present application.
- Claims 1, 34 to 36, 39 to 43, and 45 are independent.

1. Section 101 Rejection of Claims

Claims 1-7, 9, 12-13, 17-32, 39-46, and 54-56 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter “for not producing a concrete, tangible and useful result.”

We do not agree. All pending claims produce a concrete, tangible and useful result. The Examiner has not provided any reasoning in support of a conclusion that any rejected claim fails to produce a useful, concrete, and tangible result. The Examiner does not indicate any construction of or analysis of the claimed subject matter that would support a conclusion that no aspect of the rejected claims produces a useful, concrete, and tangible result. Accordingly, the Examiner has not provided a *prima facie* case that any claim fails to produce a useful, concrete and tangible result.

The Examiner’s rejection also appears to be arbitrarily applied only to method and medium claims. There is no indication as to why an apparatus claim reciting functionality nearly (if not completely) identical to a method claim would allow for a useful, concrete, and tangible result, but the method claim would not. Compare, for example, the recited functionality of the apparatus of Claim 36 with that recited in method Claim 1. We note that, as indicated in State Street Bank, whether a claim is directed to an apparatus, to a method, or to some other statutory class has nothing to with whether it produces a useful, concrete and tangible result.

See State Street Bank 149 F.3d at 1372, 1374 (“for the purposes of a § 101 analysis, it is of little relevance whether claim 1 is directed to a ‘machine’ or a

‘process,’”; “The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to --process, machine, manufacture, or composition of matter--but rather on the essential characteristics of the subject matter, in particular, its practical utility.”) Claim 36 generally recites the same functionality as Claim 1, yet the Examiner has not rejected Claim 36 (or any other apparatus claim). To the extent that the Examiner agrees that the functionality recited in Claim 36 produces a useful, concrete, and tangible result, the Examiner cannot base a Section 101 rejection on a contradictory assertion that the same functionality does not produce a useful, concrete, and tangible result in a claim of a different statutory class (*e.g.*, Claim 1).

We respectfully request the Examiner’s reconsideration and withdrawal of the assertion that Claims 1-7, 9, 12-13, 17-32, 39-46, and 54-56 do not produce a useful, concrete and tangible result and withdrawal of the Section 101 rejection of those claims.

2. Conclusion

For the foregoing reasons it is submitted that all of the claims are in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

If any extension of time is required, please grant a petition for that extension of time which is required to make this Response timely. If any fees are required, please charge as follows:

Deposit Account: 50-0271

Order No.: 00-018

Charge any additional fees or credit any overpayment to the same account.

A duplicate copy of this authorization is enclosed for such purposes.

Respectfully submitted,

August 11, 2005

Date



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